No. 84-406
No. 84-418

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1984

NATIONAL FOOTBALL LEAGUE, *et al.*,
Petitioners,
vs.
OAKLAND RAIDERS, LTD., and
LOS ANGELES MEMORIAL COLISEUM COMMISSION,
Respondents.

OAKLAND-ALAMEDA COUNTY COLISEUM, INC.,
Petitioner,
vs.
OAKLAND RAIDERS, LTD., and
LOS ANGELES MEMORIAL COLISEUM COMMISSION,
Respondents.

Joint Brief of Respondents Los Angeles Raiders (formerly Oakland Raiders) and Los Angeles Memorial Coliseum Commission In Reply to "Brief of Public Entities as Amici Curiae In support of Granting Writ of Certiorari", and In Reply to "Brief for the Mayor and City Council of Baltimore as Amicus Curiae Supporting Petitioners".

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As our reply to the brief of "public entities" City of San Diego and others was in printed proof, the amicus brief of Baltimore arrived. We shall refer to the brief of "public entities" as the "amicus brief" and reply to the Baltimore brief in Part III below. The amicus brief exhibits unawareness of the facts of the case, of what the issues were, and of what was decided. Its argument is reducible to two themes: (1) that cities need protection, that those named as *amici* wish to place themselves in the autocratic hands of clubowners for that protection, and that sports leagues have an interest in the location of members; and (2) that factors other than competition should override the Sherman Act.

I. First Theme: Supposed Need of Protection of Cities to Be Vested in the League, Not in Free Competition.

The *amicus* brief asks (p. 1) how cities can protect their investments in stadia and the like. The court below gave the answer in its opinion: "through the leases they negotiate with the teams for the use of their stadia" (p. 26a of Petition in No. 84-406). Indeed, the *amicus* brief reveals (p. 6) that many cities have leases of terms for as long as 30 years. The opinion below also observes (at same page) how precarious is protection placed in the clubowners' hands.[1] But, in any event, however differently the particular cities lining up as *amici* may feel, the Sherman Act commands that protection be vested in the free competitive operation of the market, not in cartelized hands.[2]

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[1]Several of the *amici* cities obtained football clubs by attracting them away from others. San Diego took the *Chargers* from Los Angeles, and Irving, Texas, took the *Cowboys* from Dallas. In baseball, which is not subject to the Sherman Act and where the leagues are free to "protect" the cities, San Diego took its baseball club, the Padres, from Washington, D.C., Atlanta took its club from Milwaukee, and Oakland took its from Kansas City.

[2]Notably absent from the list of cities joining in the *amicus* brief are Anaheim, which obtained the Rams from Los Angeles by free

When the *amicus* brief speaks (p. 1) of "willy-nilly relocations", it is not looking at *this* case (except so far as the removal of the Los Angeles Rams from Los Angeles to Anaheim, with the approval of NFL, was a "willy-nilly" relocation). After remaining in one location for two decades, the Raiders had to move to Los Angeles because the Oakland stadium had become too small and out-of-date to produce the revenue needed for a club to be competitive with the other clubs in the '80s.[3]

In its contention that a sports league has an interest in the location of its members, the *amicus* brief ignores the fact that the present case has nothing whatever to do with a rule stating objective standards about relocation, impartially applied.[4] And when *amici* assert (p. 9) that "strict standards" should not be applied to the sports area, they ignore the fact that "strict standards" were not applied in this case; the case went to the jury for decision on the Rule of Reason under a set of instructions remarkably generous to NFL.[5]

Amici's contention (p. 3) is that "the NFL's franchise location rule . . . cannot as *a matter of law* violate Section 1 of the Sherman Act". That, it will be noted, is at the opposite pole from a contention that the NFL rule cannot be declared illegal as a matter of law. It is a contention that as a matter of law the rule cannot be held illegal at all, even though, as here, it is found by the fact-finder to be

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competition, and Los Angeles, which obtained a replacement by the free competition permitted by the decision in this case.

The operation of free competition has given several of the *amici* cities football clubs in the new U.S. Football League, *viz.*, Oakland, Pittsburgh, New Orleans, and Tampa.

[3]See p. 5 of Raiders' brief in No. 84-406. Raiders left Oakland only after expiration of their lease.

[4]See pp. 12, 13 of Raiders' brief in No. 84-406.

[5]See pp. 10, 12 of Raiders' brief in No. 84-406, and pp. 5, 6 of Raiders' brief in No. 84-418.

an unreasonable restraint of trade. Nor do *amici* explain by what reasoning the NFL rule is exempt from antitrust analysis. Cut from the same cloth is the assertion by *amici* that the decision in this case against NFL's relocation rule "ignored the fact that league policies favoring franchise stability have . . . pro-competitive effects" (p. 9). But the issue whether the NFL rule involved in this case and as here applied was pro-competitive or anticompetitive was put to the jury, the fact-finder, and it found that it was anticompetitive, that it had nothing to do with "stability". One allied product of gratuitous fantasy is *amici's* statement (p. 9) that NFL's decision "to maintain the Raiders' operations in Oakland was motivated by the belief that such a decision served league interests". On a mass of evidence, the jury found that decision to be arbitrary, in violation of the obligation of good faith and fair dealing, inspired by animosity and the selfish interests of various clubs, and not by any legitimate league interest.[6]

Because the *amicus* brief (p. 8) summons to its aid an anonymous editorial in a newspaper,[7] we adopt as part of our argument the words of a person whom NFL's petition (in No. 84-406, p. 7) includes among qualified "economists and commentators", Mr. L. Koppett. In an article in *The Sporting News* of February 14, 1981, entitled "Raiders Move No Blow for Anarchy", Mr. Koppett wrote that if NFL's specific relocation rule were adjudicated to be illegal

> "[t]he league would simply have to adopt a new rule, more compatible with the antitrust laws, for future cases.
>
> "This has already happened with respect to the college draft and the Rozelle Rule (about compensation

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[6]See pp. 6-7 of Raiders' brief in No. 84-406.

[7]*USA Today*, until recently an affiliate in the Gannett chain of the Oakland *Tribune*, hardly an impartial observer.

for a free agent who changes teams). The old rules the NFL had on these points were found to be illegal under the antitrust laws, several years ago, in several lawsuits.

"The league had to create more suitable rules, which the courts then approved.

"At the time, we heard the same cries from the NFL commissioner, its lawyers and most club owners that 'the game as we know it' would be hopelessly wrecked if the old, restrictive draft and reserve rules were weakened. But the last time I looked, the draft was still in existence, the NFL was boasting about setting attendance records in 1980, television income was at an all-time high and most players were reporting for work at the right time and actually following the instructions of their coaches.

"So a Raiders move to Los Angeles, if permitted by the courts, will be serious enough to those involved, but hardly the signal for bloody revolution on the pro football front."

II. Second Theme: Appeal to Factors Unconnected with Competition.

The *amicus* brief asserts (p. 2) that "the courts below failed to give due consideration to the equally important 'investment' of community spirit and pride in local sports teams" and that the antitrust laws were not "intended to frustrate or undermine the public interest". So far as any notion about competition is embodied in the word "public interest", it *was* given to the jury to consider. So far as the words "public interest" relate to factors not connected with competition, they lie outside the antitrust law.[8] If they are to supplant the antitrust considerations made

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[8]See pp. 4, 5 of Raiders' brief in No. 84-418.

paramount by the Sherman Act, only Congress may say so. And, as for the suggestion by *amici* (p. 1) that the City of Oakland relied on some commitment that the Raiders would stay in Oakland, given when the Oakland stadium was built, it is contrary to a finding implicit in the jury verdict that there was no such reliance.

Amicus brief says nothing not said at greater length in the petitions in 84-406 and 84-418. Amici's reliance on *Copperweld Corp. v. Independence Tube Corp.*, ... U.S. ....., 81 L.Ed.2d 628, 104 S.Ct. 2731 (1984), and on Justice Rehnquist's dissent from denial of certiorari in *National Football League v. North American Soccer League*, 459 U.S. 1074 (1982), is answered in our brief in No. 84-406, at pp. 17-20.

Amici (p. 2) argue that consideration should not be focused on "sports competition among the NFL teams" but on an "economic competition among different sports and between sports and other entertainment". But the trial court put to the jury the question of what constituted the "relevant market" and called to its attention NFL's contention that the relevant market was the entire field of entertainment. The jury rejected that claim.[9]

III. Reply to Amicus Brief of Baltimore.

Our reply to Baltimore may be short: It raises no issues under the Sherman Act.

Baltimore's first argument is that long-term stadium leases are not sufficient protection to a city, because the tenant may breach the lease and the damages may not be reparable by a money award. The answer is obvious: A city so circumstanced may sue for and obtain an injunction under state or common law, as was done by New York in *City of New York v. New York Jets Football Club, Inc.*, 394 N.Y.S.2d 799 (1977).

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[9]See pp. 18, 19 of Raiders' brief in No. 84-406.

We do not know how accurate is Baltimore's description of its relation to the *Colts* and of its reliance and dependency on the *Colts*. But it is not true of Oakland and the Raiders, as we pointed out in our brief in response to the petition in No. 84-418 (at p. 4).

Baltimore's second point is the same one about "public interest" factors answered at pages 4 and 5 of our brief in No. 84-418.

Baltimore's appeal is simply one that should be addressed to Congress. Indeed, the same arguments *were* presented to Congress by the Mayor of Oakland and its counsel and by Congressmen from the area where Oakland is located.[10]

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[10]See pages 348-353, 408-422, 608-620 of Oversight Hearings Before the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary, House of Representatives, Ninety-Seventh Congress, First and Second Sessions, on H.R. 823, H.R. 3287, and H.R. 6467, Antitrust Policy and Professional Sports, Serial No. 114.

CONCLUSION

The list of *amici* cities is simply part of NFL's whipped-up publicity claque so active in the media and in lobbying in Congress and adds nothing to the case. We respectfully submit that neither *amicus* brief adds any intellectual content to the attempt to obtain a review by this Court and that the petitions should be denied.

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